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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1946

No. 1370

I. H. SPEARS,

Appellant,

vs.

EVA MAE SPEARS

APPEAL FROM THE SUPREME COURT OF THE STATE OF MICHIGAN

MOTION TO AFFIRM AND STATEMENT OPPOSING JURISDICTION

EVA MAE SPEARS,
Appellee, pro se.

GEORGE A. SUTTON,
Counsel for Appellee.

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SUPREME COURT, STATE OF MICHIGAN

43,566

IN THE MATTER OF THE ESTATE OF MANSFIELD L. SPEARS, DECEASED;

EVA MAE SPEARS,
Proponent & Appellee,

vs.

WILLIAM TALMADGE SPEARS, ET AL.,
Contestants & Appellants;

I. H. SPEARS,
Assignee

MOTION BY EVA MAE SPEARS TO AFFIRM DECISION

To the Honorable Supreme Court of the United States:

Now comes Eva Mae Spears, proponent and appellee herein and moves the Honorable Supreme Court of the United States to affirm the Decisions of the Michigan Supreme Court herein appealed to this Honorable Court, by one I. H. Spears as alleged "assignee" of his *seven* clients—the original Contestants and Appellants herein—for the following reasons:

I

That said Appeal was taken for the purpose of delay only, and that the questions upon which the decision of the Court depends are so unsubstantial and frivolous as not to

need further argument. (See *Hamblin* v. *Western Land Co.*, 147 U. S. 531, and *Honeyman* v. *Hanan*, 302 U. S. 375).

II

That the appeal involves matters of State practice and does not present a Federal question.

(See *Sawyer* v. *Piper*, 189 U. S. 154; *Kammerer* v. *Kroeger*, 299 U. S. 302.)

III

That this appeal is not being taken by the Contestants and Appellants herein, but by said I. H. Spears (attorney for appellants) in his own right, as "assignee" of said appellants, whereas the Record herein fails to disclose any assignments to him which would justify a substitution of parties; that the only assignments relied upon, are a so-called "Pooling Agreement," dated March 30, 1946, and a subsequent assignment by William Talmadge Spears, dated October 30, 1946—copies of which are annexed to I. H. Spears' Petition to the Michigan Supreme Court for "Substitution of Appellants and for Further Time to Complete Record on Appeal"—and these documents do not constitute assignments of interest. They are mere agreements employing him and authorizing him to act in their behalf, as appears from the following wording taken from said "Pooling Agreement", to-wit:

> "• • • in order that our said attorney may the more efficiently and easily handle said estate; and in order that he may push said claims to a success *and deliver to each person interested his* just and *proportionate share* thereof • • • we do by these presents, grant unto *our said attorney* full authority and power to do, and perform every act in relation to said estate and *in our interest therein* as may be necessary in bringing to final determination and settlement of said estate *in our behalf*".

that since this so-called "Pooling Agreement" was dated in March, 1946, and was not presented to the Michigan Supreme Court by I. H. Spears, as a basis for attempting to have himself substituted as contestant and appellant, until a few days after that Court had made and entered its Order of December 2, 1946, denying I. H. Spears' petition for leave to appeal from the Order of the Oakland County (Mich.) Circuit Court revoking his license to practice law in Michigan; this made it apparent that his attempt to be substituted was not in good faith, but was a flagrant attempt to circumvent the said Court Order denying him the right to practice in Michigan, and that a different ruling by the Michigan Supreme Court, would have aided I. H. Spears to perpetrate a fraud upon the Courts, and possibly his own clients.

IV

That I. H. Spears has produced no assignments to himself other than the so-called "Pooling Agreement" (which is, at most, a power of attorney), and an assignment from William Talmadge Spears, which, by referring therein to the "Pooling Agreement," thereby makes said would be assignment a power of attorney, also; so that he, the said I. H. Spears, did not thereby become, and is *not* the "real party in interest"; and it is therefore *apparent* that this and his prior efforts to become substituted as appellant herein, are not only attempts to circumvent the lower Courts' orders denying him the right to act as attorney for the appellants herein, but is also an attempt to wrongfully obtain and use the aid of this Court for the purpose of coercing the Deceased's widow, Eva Mae Spears, into paying him large sums of money to which he is not justly entitled.

V

That although there are five assignments of error, yet together they say but two things, namely: that the refusal of the Michigan Supreme Court to grant I. H. Spears' petition to be substituted as defendant and appellant herein; and its refusal to grant him an additional extension of time to complete his Record on appeal, *both* amounted to a taking away of his property without due process of law, and also denied him equal protection of the laws. However, neither the "assignments of error" nor the accompanying "Jurisdictional Statement" disclose how, or in what manner the Decisions appealed from were discriminatory, or how they took from him *any* property, either with or without "due process of law." Since the alleged "assignments" upon which he relies, are, in fact, agreements creating agency, it cannot be logically said that the refusal of the Michigan Supreme Court to substitute I. H. Spears (the agent) as a party, in place of the principal, violates those sections of the Constitution referred to. Whereas the refusal of that Court to grant him additional time within which to complete record on appeal, was merely a question of "State Practice" over which this Court has no jurisdiction.

VI

That, as will appear from Appellee's annexed statement of matters opposing jurisdiction of the United States Supreme Court, this appeal was taken without justifiable reasons, but for the purpose of annoying the widow of Mansfield L. Spears, deceased and coercing her into paying said I. H. Spears large sums of money on fictitious claims.

VII

For the further reason that Michigan Circuit Court Rule No. 66 requires that in appeals to the Michigan Supreme

Court, the Bill of exceptions or Settled Case shall be noticed for hearing within the first 20 days after entry of judgment "or within such further time . . . as may be ordered by the trial judge, upon motion filed within said 20 days and duly noticed for hearing . . . but the Supreme Court on proper application and for cause shown may thereby extend such time. *The party desiring an extension shall produce a transcript of the testimony . . . or a certificate from the stenographer* of the trial Court stating that appellant has ordered a transcript of the testimony . . . , that payment therefor has been made or secured and that same will be furnished as soon as possible by said stenographer"; whereas, as appears from the records in this Cause and from Eva Mae Spears' "Statement of Matters Opposing Jurisdiction of the United States Supreme Court," judgment was entered herein by the trial court (allowing the Will in question) on May 27, 1946 and Claim of Appeal was filed July 12, 1946 (nine months ago) and up to the present time neither the original appellants nor I. H. Spears have obtained or filed with the clerk of said Court the required stenographer's certificate nor paid or secured her for transcribing the testimony, as a basis for an extension of time specified in said Rule. Also for the further reason that in response and compliance with I. H. Spears *prior* application for additional time to complete the record on appeal, the Michigan Supreme Court very generously granted appellants 90 days additional time (on October 8, 1946), but upon the expressed condition that appellants obtain and file with the clerk of the lower court, the said "stenographer's certificate" within 30 days from the date of that order. The Mich. Supreme Court Order here referred to is the document described under (c) of the "Praecipe of Eva Mae Spears, Indicating Additional Portions of Record Desired on Appeal," reference to which document is hereby prayed.

VIII

That because of the facts and circumstances before the Michigan Supreme Court it was not necessary for it to resort to or rely upon the Michigan Statutes referred to by I. H. Spears in his Assignments of Error, to justify its action in denying his request to be substituted as contestant and appellant herein in place of his clients, and that the constitutionality and validity of the Michigan Statutes referred to was not a *necessary* question before that Court. It is a fair presumption that the provisions of said Statutes were not even considered by that Court.

IX

For the further reason that the Michigan Supreme Court Order from which this appeal is taken, consists of two distinct parts (two orders in one), that is to say:

1. It denies I. H. Spears' right to be substituted as party appellant

2. It denies his request for additional time to complete the record on appeal

and since the said Court's decision to deny further time to complete said record on appeal—and its subsequent Order of March 4, 1947, dismissing the appeal for failure to timely complete the record, completely and permanently disposed of the case in that Court, and is not reviewable by the United States Supreme Court, the validity and constitutionality of the Michigan Statutes (M.S.A. 27.87, 27.88 and 27.89) is *unimportant*, since I. H. Spears would have no further right to proceed with the appeal from the trial court to the Michigan Supreme Court, regardless of whether or not this Honorable Court should declare the said Michigan Statutes

constitutional or unconstitutional. The constitutional question raised by the appeal is of no consequence.

X

For the further reason that part of the contestants and appellants to this Action, by I. H. Spears as their attorney, did on or about November, 1946, commence an Action in the U. S. District Court at Detroit, Michigan, for the very purpose of inforcing the same Last Will and Testament of Mansfield L. Spears, Deceased, which is in *this Appeal* being contested, thus using the Courts as *his* instruments to harrass and annoy Eva Mae Spears, rather than for purposes of justice; that the "Complaint" filed in the District Court Action referred to (Paragraph 7) states as follows:

> "Further plaintiffs ask this court to construe paragraphs VI and VII of said Will, which has been admitted to probate in Oakland County Probate Court, and to determine the interest these plaintiffs take under same."

which said Action is still pending in said District Court at Detroit. (A copy of the "Complaint" is made a part of the annexed "Statement of Eva Spears, Appellee, of matters Opposing Jurisdiction of United States Supreme Court").

This proponent of said Will and Appellee herein, does therefore respectfully request this Honorable Court to either affirm the said Decisions and Rulings of the Michigan Supreme Court, from which this appeal is taken, or dismiss said appeal, as in the sound discretion of the Court shall seem proper.

This Motion is presented under and in accordance with the provisions of United States Supreme Court Rules No. 7, Sec. 4; and No. 12, Sec. 3.

Very Respectfully submitted,

EVA MAE SPEARS,
Proponent and Appellee.

GEORGE A. SUTTON,
Attorney for Eva Mae Spears,
604 Community Bank Building,
Pontiac, Michigan.

SUPREMRT OF THE STATE OF MICHIGAN

43,566

In the Matthe Estate of Mansfield L. Spears, Deceased

EVA MAE SPEARS,

Proponent,

vs.

WILLIALMADGE SPEARS, ET AL.,

Contestants and Appellants.

(I. ears, Assignee of Contestants).

APPELLEESTATEMENT OF MATTERS OPPOSING JURISDIC OF THE UNITED STATES SUPREME COURT.

Eva Mae s is the widow of Mansfield L. Spears, who died int September 16, 1945. At the time of his death they h joint savings account in the Community National Be Pontiac, Michigan, $18,196.00 which represented oint accumulation over twenty-four (24) years. Beca rtain heirs of deceased (represented by I. H. Spears ertook to claim said savings account as a part of th ts of deceased's estate, the widow commenced acti the Oakland County Circuit Court of Michigan in ery, for the purpose of establishing the fact that the nt had been "Joint" with the right of survivorship became her sole property upon her hus-

band's death. The Trial Judge so found and decreed on May 6, 1946.

An appeal to the Michigan Supreme Court was taken by contestants and appellants on June 11, 1946, but because of failure of appellants to complete the Record on Appeal during the following nine months period, or show proper cause for failure to do so, the appeal was dismissed by the Michigan Supreme Court on March 4, 1947. From that order I. H. Spears, formerly attorney for the contestants and appellants, as alleged assignee of his clients' interests in the subject matter of the litigation, has appealed to the United States Supreme Court. His appeal in that case (as in the instant case) is also from a Michigan Supreme Court order denying his petition for an order substituting him personally as contestant and appellant (by virtue of above mentioned assignments) in place of his several clients.

In October, 1946, members of the Oakland County Bar Association learned that Isiah H. Spears had been a resident of California for the last fifteen years, and had never been granted a license to practice law in that State and that he had obtained from one of the circuit judges of Oakland County, Michigan, an order dated October 31, 1945 authorizing him to appear as attorney for heirs of Mansfield L. Spears, deceased, in *this* cause. But that in order to obtain such an order, he had filed a sworn petition setting up in effect that he was a licensed attorney of the State of Florida, but which made no mention of the fact that his license to practice in Florida had been granted in 1908, and that in 1909 or 1910 he had been informed against for forgery, etc., and tried by a county criminal court and convicted by a jury, and that on appeal to the Florida Supreme Court he was granted a new trial for the reason that the prosecutor had failed to elect upon which of the three charges in the information he relied for conviction. (See *People* v. *Spears*, 59 Fla. 44; 51 So. 815); nor did his petition

show that he had thereupon left the State of Florida in 1911 and had not resided there since that time; his said petition also failed to show that on December 31, 1912 he had been granted a license by the county court of Jackson County, Missouri, to practice law in Missouri, upon a petition filed by him for that purpose, and that his license to practice in that State had also been permanently revoked by order of the Supreme Court of Missouri on March 28, 1913.

Upon learning these facts, the Oakland County, Michigan, Bar Association, through its appropriate officers and committees, filed a petition in the circuit court of said County and State to have the order authorizing I. H. Spears' license to practice law in Michigan, revoked. Upon a hearing had in open court, before the three county judges, the following order was made and entered to-wit:

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

No. 28477

In the Matter of the Petition for Revocation of License of ISIAH H. SPEARS to Practice Law in the Circuit Court for the County of Oakland

At a Session of the Circuit Court for the County of Oakland held at the Court House in the City of Pontiac, on the 28th day of October, 1946.

Present: Honorable George B. Hartrick, Honorable Frank L. Doty, Honorable H. Russell Holland, Circuit Judges.

The Petition for revocation of License of Isiah H. Spears to practice law in the Circuit Court for the County of Oakland, having been brought on for hearing after due proof

of personal service of an Order to Show Cause why such license should not be revoked upon the said Isiah H. Spears; and the matters in issue being duly argued in open court and it appearing unto the Court that the Order of October 31, 1945, permitting the said Isiah Spears to practice before the Circuit Court for the County of Oakland in the matter of the Estate of Dr. Mansfield L. Spears (Will Contest) No. Law 27,987 was obtained through fraud and misrepresentation on the part of said Isiah H. Spears in presenting his Petition therefor to this Court, and that said Order should therefore be revoked.

Therefore it is ordered that the Order issued October 31, 1945, permitting the said Isiah H. Spears to practice before the Circuit Court for the County of Oakland in the matters of the Estate of Dr. Mansfield L. Spears (Will Contest) No. Law 27,987 is hereby revoked, vacated and held for naught.

It is further ordered that all privilege and license relative to the practice of law in the Courts in the County of Oakland, and State of Michigan, by the said Isiah H. Spears in any manner arising out of or resulting from the entry of said Order of October 31, 1945, is hereby revoked.

It is further ordered that the Clerk of this Court forthwith strike from the Roster of Practicing Attorneys in the County of Oakland, State of Michigan, the name of Isiah H. Spears as subscribed on page 101 of said Roster, pursuant herewith.

It is further ordered that a certified copy of this Order be served by registered mail upon the said Isiah H. Spears at his last known address.

FRANK L. DOTY,
GEORGE B. HARTRICK,
H. RUSSELL HOLLAND,
Circuit Judges.

That thereupon Isiah H. Spears petitioned the Michigan Supreme Court for leave to appeal from said Order, which leave was denied by said Supreme Court by the following Order made December 2, 1946, to-wit:

At a Session of the Supreme Court of the State of Michigan, held at the Supreme Court Room, in the Capitol, in the

City of Lansing, on the second day of December in the year of our Lord one thousand nine hundred and forty-six.

Present the Honorable Henry M. Butzel, Chief Justice; Leland W. Carr, George E. Bushnell, Edward M. Sharpe, Emerson R. Boyles, Neil E. Reid, Walter H. North, John R. Dethmers, Associate Justices.

43616½

IN THE MATTER OF ISIAH H. SPEARS.

In this cause an application is filed by appellant Isiah H. Spears for leave to appeal from an order of the Circuit Court for the County of Oakland, entered October 28, 1946, and a brief in opposition thereto having been filed by appellee and due consideration thereof having been had by the Court, It is Ordered that the application be and the same is hereby Denied.

(The Order referred to was entered in the Circuit Court for the County of Oakland cancelling and revoking an order of that Court permitting appellant to practice in that Court in the Matter of the Estate of Mansfield L. Spears, deceased).

Seal of
Michigan Supreme
Court

Being no longer authorized to practice law in Michigan or to represent his clients in the courts there, I. H. Spears promptly and on or about December 3, 1946, filed his petition setting up that his clients had all assigned all of their rights and claims to him, and asked that court to substitute himself individually as contestant and appellant, as appears by reference to the alleged "Assignments" annexed to his "Petition and Affidavit for Extension Time, etc." Also, his Petition for Re-hearing of his application for substitution, etc., designated as items 1 and 4 of Defendant and Appellant "Praecipe for Parts of Record" in this appeal.

Plaintiff and Appellee's answer to defendant's and appellant's "Petition" for an extension of time to perfect the appeal and to be substituted as the party defendant and appellant, alleges two reasons why the substitution of I. H. Spears should be denied, namely:

(First reason) That the alleged "assignments" upon which I. H. Spears bases his right to be substituted as defendant-appellant herein do not make him the real party in interest, but are mere powers of attorney appointing him agent for the purpose of making settlements, etc., in behalf of his clients.

(Second reason) That Michigan Statutes M. S. A. 27.87; 27.88 and 27.92 prohibit assignments of claims to attorneys for the purpose of bringing suits thereon. This "Second reason" was unimportant and the Court's decision would have been the same without it.

The Record in this Cause does not disclose that the Michigan Supreme Court was obliged to, or did, take into consideration the validity or constitutionality of M. S. A. 27.87; 27.88 or 27.92 in reaching the decision appealed from.

As to the appeal from the Order of the Michigan Supreme Court *denying extension of time to perfect appeal*, no ground for jurisdiction of the United States Supreme Court, as to this point, is contained in appellant's "Jurisdictional Statement." The constitutionality of the Michigan Statutes referred to is entirely separate from, and has no connection with this alleged ground for appeal, and the appeal should be dismissed as to this ground.

The Oakland County, Michigan Circuit Court judgment appealed from, became final and appealable on May 27, 1946, and Michigan Circuit Court Rule 66 provides:

> Section 1. "In appeals to the Supreme Court from a court of record where a bill of exceptions or settled case is required, the appellant shall prepare a proposed bill of exceptions or settled case, and shall attach thereto (1) a statement of the reasons and grounds

of appeal and (2) a notice when and where the same will be presented for settlement. Such reasons and grounds of appeal need not be limited to those stated in the application, if any, for leave to appeal."

Section 2. "The time noticed for such settlement shall be within 20 days after the date of filing the claim of appeal when the appeal is of right, or within 20 days after notice to appellant by the clerk of the Supreme Court of the allowance of the appeal, or within such further time, not exceeding 1 year after entry of judgment, as may be ordered by the trial judge, upon motion filed within said 20 days and duly noticed for hearing. The trial judge shall not have jurisdiction to settle such bill of exceptions or settled case after said 20 days except when time has been extended *on motion filed within said 20 days;* but the Supreme Court on proper application and for cause shown may thereafter extend such time. The party desiring an extension shall produce a transcript of the testimony necessary to the preparation of a bill of exceptions or a settled case, *or a certificate from the stenographer* of the trial court stating that appellant has ordered a transcript of the testimony necessary for the preparation of a bill of exceptions or settled case, that payment therefor has been made or secured, and that the same will be furnished as soon as possible by said stenographer";—

Under the provisions of this Rule, contestants and appellants had 20 days after May 27, 1946 (or until June 16, 1946), to file with the clerk of that court the—

> "Certificate of the Court stenographer stating that appellant had ordered a transcript of the testimony necessary for the preparation of a bill of exceptions or settled case and that payment therefore has been made or secured, etc."

That because contestants failed to obtain and file said "Stenographer's Certificate", the lower court denied their petition for an extension of time after the 20 day period

had expired; that thereupon contestants filed their Petition with the Michigan Supreme Court for an extension of time on September 20, 1946 (without first having filed the "Stenographer's Certificate"), to which Petition Eva Mae Spears, appellee, filed in that court an answer denying right to an extension of time; also a brief annexed thereto in support of said Answer. These Documents, *i. e.* Petition for Extension of Time and the Appellee's Answer thereto with its accompanying Brief, are designated as (a) and (b) of "Praecipe of Eva Mae Spears, indicating Additional Portion of Record Required on this Appeal."

In due time thereafter, and on October 5, 1946, the Michigan Supreme Court made the Order designated as (c) of said Praecipe of Eva Mae Spears for additional Portions of the Record on Appeal. That Order gave appellants 90 days additional time to complete their Record on Appeal, *provided that within 30 days* from the date of said Order the Proponents and Appellants would obtain and file with the Oakland County Clerk, the Stenographer's Certificate, called for in said Court Rule No. 66. However, the appellants, and/or I. H. Spears, failed to comply with either of the provisions of said Order, and have never to present time obtained and filed said "Stenographer's Certificate."

Under the circumstances herein-before related, the Michigan Supreme Court would very naturally be adverse to granting I. H. Spears' individual Petition to further extend the time to prepare the Record on appeal from the lower court. Also, in view of the Disbarment proceedings against I. H. Spears resulting in the lower court Order cancelling his right to further practice law in Michigan, and in view also of the following Order of the Michigan Supreme Court, made and entered in this Cause, on December 2, 1946, to-wit:

> "At a Session of the Supreme Court of the State of Michigan, Held at the Supreme Court Room, in the

Capitol, in the City of Lansing, on the second day of December, in the year of our Lord one thousand nine hundred and forty-six.

Present the Honorable Henry M. Butzel, Chief Justice; Leland W. Carr, George E. Bushnell, Edward M. Sharpe, Emerson R. Boyles, Neil E. Reid, Walter H. North, John R. Dethmers, Associate Justices.

43566

IN THE MATTER OF THE ESTATE OF MANSFIELD L. SPEARS, DECEASED

In this cause a motion is filed by proponent to strike the name of I. H. Spears as attorney of record for contestants in the above cause, and a brief in opposition thereto having been filed by the said I. H. Spears, and due consideration thereof having been had by the Court, It is ordered that the motion be and the same *is hereby granted*, and it is further ordered that the petition of the said I. H. Spears for leave to represent the appellants in the cause be and the same is hereby denied."

It is very apparent that the Michigan Supreme Court was not obliged to take into consideration the constitutionality of the Michigan Statutes designated in appellant's "Jurisdictional Statement" (Michigan Statutes Annotated 27.87; 27.88; and 27.89) in order to find justification, either for denying his application for additional time to perfect appeal or his Petition to be substituted as party appellant herein. In this regard, attention is called to the fact that I. H. Spears' Petition to be substituted as Appellant, was not presented to the court until a few days after the court's Order above set forth, thus clearly establishing his actions in this regard as an attempt to circumvent the court's said Order. However, the matter of granting or refusing I. H. Spears' request for an extension of time to perfect the Record on appeal was purely a discretionary question, ex-

clusively for the Michigan Supreme Court to decide, and its decision thereon cannot be reviewed by the United States Supreme Court.

Since the appeal to the Michigan Supreme Court was dismissed by that Court because of appellant's failure to complete the Record on Appeal within the time prescribed by that Court, the question of the constitutionality of the Michigan Statutes referred to by defendant and appellant's "Jurisdictional Statement" is of no consequence. It could avail defendant and appellant nothing for this Court to render a decision holding the Michigan Statutes M. S. A. 27.87; 27.88; 27.92 unconstitutional, if, at the same time, this Court cannot set aside the Michigan Supreme Court Order of December 17, 1946 denying an extension of time within which to complete the Record on appeal to that Court. All of the facts and circumstances here related were known to and were taken into consideration by the Supreme Court of Michigan in denying appellant's Motion for an extension of time as well as his Petition to be substituted as party defendant and appellant, and should therefore be known and considered by this Honorable Court.

It is the further contention of Plaintiff and Appellee that this appeal is frivolous and was taken by I. H. Spears for the main purpose of coercing Eva Mae Spears into paying him a large sum of money in settlement of his ficticious claims; that she is justified in this belief from her previous experiences with him; that upon her refusal to pay him $10,000.00 in settlement, he has commenced the following court actions against her since her husband's death September 16, 1945, to-wit:

1. Appealed Will Contest to Michigan Supreme Court and then failed to complete Record on Appeal.

2. Commenced Civil Action No. 237 in United States District Court, Pensacola, Florida.

3. Commenced another Civil Action No. 239 in United States District Court, Pensacola, Florida.

4. Commenced Civil Action No. 5756 in United States District Court, Detroit, Michigan.

5. Appealed from Order of District Judge Honorable Ernest A. O'Brien, dismissing Cause, to United States Circuit Court of Appeals for the Sixth Circuit—where said appeal is still pending and is notified for hearing on Motion to Dismiss April 17, 1947.

6. Commenced another Civil Action (No. 6056) United States District Court, Detroit, Michigan, which Cause is now awaiting decision by Honorable Judge Picard on Motion to Dismiss.

7. June 7, 1946 commenced Civil Action File No. 5780 in United States District Court, Detroit, Michigan.

8. January 22, 1947 commenced Civil Action File No. 6322 in United States District Court, Detroit.

As further evidence of the fact that this appeal is frivolous and unimportant and that the said I. H. Spears is not acting in good faith, appellee shows to the court that after the appeal to the Michigan Supreme Court from the lower Court's Judgment allowing the proposed Will of Mansfield L. Spears, dated August 27, 1945; the said I. H. Spears —as attorney for King David and William Talmadge Spears (two of the appellants herein)—filed a Complaint in the United States District Court at Detroit, Michigan in which complaint he alleged that the same identical Last Will and Testament here being contested, was in fact, the Last Will and Testament of said deceased, and therein asked *that* Court,

> "To construe paragraphs VI and VII of said Will, which has been admitted to probate in Oakland County Probate Court, and to determine the interest these plaintiffs take under same."

This District Court Action at Detroit is still pending in that Court. The complaint in that Cause is hereto annexed and marked Exhibit "A" and made a part of this statement.

Respectfully submitted,

EVA MAE SPEARS.

GEORGE A. SUTTON,
Attorney for Eva Mae Spears.

EXHIBIT "A"

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MICHIGAN, SOUTHERN DIVISION.

Civil Action File No. 6056

KING DAVID and WILLIAM TALMADGE SPEARS, *Plaintiffs*,

vs.

GEORGE A. SUTTON, Executor of the Estate of Dr. Mansfield L. Spears, Deceased, EVA MAY SPEARS, as Special Administratrix and Individually, and COMMUNITY NATIONAL BANK OF PONTIAC, MICHIGAN, a National Banking Corporation, *Defendants*.

Complaint in Equity

Plaintiffs for their complaint for equitable relief against the defendants, say the jurisdiction of this court is founded on diversity of citizenship pursuant to 28 U. S. C. A. Section 41 (1) a, b; that the plaintiff, King David is a citizen of the United States, and a citizen of the State of New Jersey, resident at 54 Princeton St., East Orange; that the plaintiff, William Talmadge Spears is a citizen of the United States, and a citizen of the State of Florida, resident at 613 W. Wright St., Pensacola, Florida.

That each of the defendants is a citizen of the United States, and a citizen of the State of Michigan; that is George A. Sutton, Executor of the Estate of Mansfield L. Spears, deceased, is a citizen of the United States, and a citizen of the State of Michigan; that said Testator was a citizen of the United States and a citizen of the State of Michigan, resident at Pontiac, Mich., at the time of his death; that Eva Mae Spears is a citizen of the United States and a citizen of the State of Michigan, resident at 68 Murray St., Pontiac, Michigan; that the Community National Bank of Pontiac, Michigan, is a National Banking Corporation, authorized to do business at Lawrence and Saginaw Sts., Pontiac, Michigan.

The claim of each of the plaintiffs is in excess of $3000.00 excluding interest and costs; that *the claim of King David is that he is a legatee under the will of Dr. Mansfield L. Spears, deceased, under the VII paragraph thereof; the claim of William Talmadge Spears, is that of sole heir of Mansfield L. Spears, deceased and paragraph VIII of said Will, a copy of which Will is hereto annexed and made a part of this complaint, marked Exhibit A.*

Plaintiffs further say, Mansfield L. Spears departed this life on the 16th day of September 1945, at Pontiac, Michigan, and left him surviving, the defendant, Eva Mae Spears, his widow and William Talmadge Spears, his only son; that he left an estate consisting of the following real estate in Oakland County, in the City of Pontiac, lots 120, 121 Bloomfield Hills Addition No. 3, Value $4,400.00; lots 8, 11, 57, Bloomfield Hill Addition No. 2, Value $7,000.00; lot 6, Kent's Addition, Value $1,800.00; lots 238, 239, Wilson Park Addition, value $2000.00; lots 3, and 402, Fairview Heights Addition, value $600.00; lot 180 Crystal Lake Addition, value $1,000.00; lot 128 Gillespie Van Wagner Addition, value $1,200.00 at Idlewild, Lake County, Michigan, lots 3, 4, 25, 26, Block 22 Plat L. C. Value $1,200.00; lots 2 to 22 inclusive, Blountstown, Fla., value $2100.00 a total of $21,300.00; and personal property; Cash on deposit in Savings Account in the defendant, Community National Bank of Pontiac, $18,196.67; Postal Savings Deposit, at Pontiac, Michigan $1000.00; office equipment and supplies, library and other personal property, $4,500.00, or a total value of said estate of approximately, $46,000.00.

Plaintiffs say the defendant, George A. Sutton is the Executor under said will by appointment of the Probate Court of Oakland County, Michigan, and is acting at this time; that prior to his appointment, the Defendant, Eva Mae Spears, was the duly appointed, qualified and acting Special Administrator under appointment of the Probate Court of Oakland County, Michigan; that notwithstanding more than one year has elapsed since the death of the testator, neither the Special Administrator, nor the executor has filed a complete inventory and appraisement of said estate as by law require-; but each has been guilty of mismanagement, waste of said estate; and have conspired to

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And to that end, plaintiffs pray that the proper process of this court issue to each of the defendants, requiring each to answer this complaint and that upon a full hearing of this cause an accounting by the respective defendants be required and directed to the end that this court may properly determine the interests of these plaintiffs, and that your plaintiffs may have such other and further orders, judgments, etc., as may be proper and to which they may be entitled.

I. H. Spears,
Attorney for Plaintiffs,
73 W. Bellevue Dr., Pasadena 2, California.
280 Rapid St., Pontiac 19, Michigan.

SUPREME COURT, STATE OF MICHIGAN

43,566

IN THE MATTER OF THE ESTATE OF MANSFIELD L. SPEARS, DECEASED

EVA MAE SPEARS,
Proponent & Appellee,

vs.

WILLIAM TALMADGE SPEARS, ET AL.,
Contestants & Appellants.

I. H. Spears, Assignee of Contestants and Appellants

BRIEF IN SUPPORT OF MOTION TO AFFIRM

If it appears from the files and records in this cause that there were one or more grounds, aside from the constitutionality of the Michigan Statutes mentioned in Appellant's Assignments of Error, which *could* have justified the decision of the Michigan Supreme Court, if true, independent of the Federal question; then the United States Supreme Court will not assume jurisdiction and the appeal should be dismissed. However, if it does assume jurisdiction, it will affirm the decision of the State court without determining whether the State court was right or wrong in regard to non-Federal questions.

It is stated in *Orlinger's Federal Practice*, Vol. I, page 837, that the decision of a state court will be affirmed

> "Unless it appears that the judgment or decree of the State Court cannot be rested upon the decision by

that court of an independent nonfederal issue, broad enough to sustain the judgment or decree, and with fair support inthe Record".

To the same effect see *Moran* v. *Horsky*, 178 U. S. 205; also *Eustis* v. *Bolles* (1839) 150 U. S. 361.

In *Cuyahoga Power Co.* v. *Northern Realty Co.*, 244 U. S. 300, it was held that whenever it does not clearly appear from the Record whether the state court based its judgment or decision on the Federal or nonfederal issue in the case, the Supreme Court will dismiss for want of jurisdiction.

See also: *Lynch* v. *New York*, 293 U. S. 52.

Matters of state practice do not present Federal questions.

Orlinger's Federal Practice Vol. I, p. 834;
Sawyer v. *Piper*, 189 U. S. 154;
Kammerer v. *Kroeger*, 299 U. S. 302.

Argument

The appeal in the instant case complains of two decisions by the Michigan Supreme Court, namely:

First: Its refusal to grant the appellant additional time for perfecting appeal from the trial court;

Second: Its refusal to grant an order substituting I. H. Spears as Contestant and Appellant.

The first of these questions pertains entirely to the matter of State practice and clearly involves no Federal question. As to that question it is apparent that the State court's decision averse to I. H. Spears, completely ended the case. Without additional time to complete his record, it may as well besaid that he was out of court. In any event its denial ofan extension of time was a certain fore-

runner of the Motion to Dismiss the Appeal and dismissal thereof, of which Appellant now complains. In other words, the order of the State court dismissing the appeal, was certain to occur regardless of the Federal question raised by I. H. Spears.

The decision on the second question involved both Federal and nonfederal issues; that is to say: Federal, in so far as it involves the constitutionality of the Michigan statutes in question, and nonfederal, in so far as it involves the validity, and legal effect of the alleged "assignments" presented by I. H. Spears. For instance, the Michigan Supreme Court would have been justified in denying Mr. Spears' motion to be substituted, if it had found that said "assignments" did not convey an interest, so as to make him the "real party in interest"; or if it had found that, or believed that, said "assignments" were a part of a scheme to avoid the effect of the prior court order denying I. H. Spears the further right to practice law in Michigan, or for any other factual reason.

There is *no proof* before the Court that the Michigan Supreme Court passed upon any Federal question in denying Mr. Spears' motion to be substituted as appellant herein.

See *Cuyahoga Power Co.* v. *Northern Realty Co.*, 244 U. S. 300.

In view of the fact that this Honorable Court will not disturb the ruling of the Michigan Supreme Court denying appellant's right to an extension of time to complete the record on appeal from the trial court, therefore a decision by this Court as to any Federal questions involved is unimportant and would avail the appellant nothing. Failure to complete the record on appeal to the State Court in the manner required by the rules of that court and dismissal of the appeal for that reason by that court, completely dis-

posed of the action in the State Court, so that a decision, now, as to the Federal question would be useless.

Very respectfully submitted,

GEORGE A. SUTTON,
Attorney for Eva Mae Spears,
Proponent & Appellee,
604 Community Bank Building,
Pontiac, Michigan.

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